

SUMMONS ISSUED

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U.S. DISTRICT COURT E.D.N.Y.

★ JAN 30 2012 ★

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

SHIMON MINSKY on behalf of himself  
and all others similarly situated

BROOKLYN OFFICE

Plaintiff,

-against-

GLOBAL CREDIT & COLLECTION CORPORATION

Defendant.

12-448

WEINSTEIN, J.

REYES, M.J

CLASS ACTION COMPLAINT

*Introduction*

1. Plaintiff seeks redress for the illegal practices of Global Credit & Collection Corporation concerning the collection of debts, in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* ("FDCPA").

*Parties*

2. Plaintiff is a citizen of the State of New York who resides within this District.
3. Plaintiff is a "consumer" as that term is defined by Section 1692(a)(3) of the FDCPA, in that the alleged debt that defendant sought to collect from plaintiff is a consumer debt, purportedly owed to Capital One Bank (USA) N.A..
4. Upon information and belief, defendant is a New York corporation with a principal place of business located in Williamsville, New York.
5. Defendant is regularly engaged, for profit, in the collection of debts allegedly owed by consumers.

448 Weinstein/Reyes

6. Defendant is a “debt collector” as that term is defined by the FDCPA, 15 U.S.C. § 1692(a)(6).

***Jurisdiction and Venue***

7. This Court has Federal question jurisdiction under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1331.
8. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b), as the acts and transactions that give rise to this action occurred, in substantial part, in this district. Venue is also proper in this district since the defendant transacts business in this district and the collection letter was sent into this district.

***Allegations Particular to Shimon Minsky***

9. On information and belief, on a date better known by defendant, defendant began attempting to collect an alleged consumer debt from the plaintiff.
10. Upon information and belief, defendant sent the plaintiff an initial collection letter seeking to collect a balance allegedly owed to Capital One (USA), N.A. for personal purposes dated April 25, 2011.
11. Said letter states in bold print: “**Your delinquent account now meets Capital One Bank (USA), N.A.’s guidelines for legal action if it charges off.**”
12. Said letter also states: “It is not too late to fix this situation. We urge you to act now.”
13. Said language implies a threat of legal action which is false.
14. Said language implies a false sense of urgency.
15. Upon information and belief, the actions threatened in the said letter dated April 25, 2011 did not materialize up until the time of the filing of the within complaint.

16. Said letter fails to set forth the address of the defendant in order to seek verification of the debt.
17. Said language contradicts the plaintiff's right to dispute the debt and seek verification thereof during the initial thirty day period.
18. Due to the threat of legal action and the language employed, the least sophisticated consumer would feel pressured into paying the debt when perhaps the payment of other obligations where there was no false threat of immediate suit would be more appropriate like a mortgage, rent or other payment.
19. The said letter from the within defendant is in violation of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692e(5) for engaging in false threats, 1692e(10) for engaging in deceptive practices and 1692g for contradicting the plaintiff's right to dispute the debt and fails to set forth the address in order to obtain verification of the debt.

**AS AND FOR A FIRST CAUSE OF ACTION**

***Violations of the Fair Debt Collection Practices Act brought by plaintiff on behalf of himself and the members of a class, as against the defendant.***

20. Plaintiff restates, realleges, and incorporates herein by reference, paragraphs 1-19 as if set forth fully in this Cause of Action.
21. This cause of action is brought on behalf of plaintiff and the members of a class.
22. The Class consists of consumers who received the same form letter, as did the plaintiff.
23. The Class consists of all persons whom Defendant's records reflect resided in the State of New York and who were sent a collection letter (a) bearing the defendant's

letterhead in substantially the same form as the letter sent to the plaintiff on or about April 25, 2011; (b) the collection letter was sent to a consumer seeking payment of a personal debt to Capital One Bank; and (c) the collection letter was not returned by the postal service as undelivered, (d) and that the letter contained violations of 15 U.S.C. § 1692e(10), 1692e(5) and 1692g.

24. Pursuant to Federal Rule of Civil Procedure 23, a class action is appropriate and preferable in this case because:

- (A) Based on the fact that the collection letters that are at the heart of this litigation are mass-mailed form letters, the class is so numerous that joinder of all members is impracticable.
- (B) There are questions of law and fact common to the class and these questions predominate over any questions affecting only individual class members. The principal question presented by this claim is whether the Defendant violated the FDCPA.
- (C) The only individual issue is the identification of the consumers who received the letters, (*i.e.* the class members), a matter capable of ministerial determination from the records of Defendant.
- (D) The claims of the plaintiff are typical of those of the class members. All are based on the same facts and legal theories.
- (E) The plaintiff will fairly and adequately represent the class members' interests. The plaintiff has retained counsel experienced in bringing class actions and collection-abuse claims. The plaintiff's interests are consistent with those of the members of the class.

25. A class action is superior for the fair and efficient adjudication of the class members' claims. Congress specifically envisions class actions as a principal means of enforcing the FDCPA. 15 U.S.C. 1692(k). The members of the class are generally unsophisticated individuals, whose rights will not be vindicated in the absence of a class action. Prosecution of separate actions by individual members of the classes would create the risk of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying standards for the parties and would not be in the interest of judicial economy.

26. If the facts are discovered to be appropriate, the plaintiff will seek to certify a class pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure.

27. Collection letters, such as those sent by the defendant are to be evaluated by the objective standard of the hypothetical "least sophisticated consumer."

***Violations of the Fair Debt Collection Practices Act***

28. The defendant's actions violate the Fair Debt Collection Practices Act.

29. Because the defendant violated of the Fair Debt Collection Practices Act, the plaintiff and the members of the class are entitled to damages in accordance with the Fair Debt Collection Practices Act.

WHEREFORE, Plaintiff, respectfully requests that this Court enter judgment in his favor and on behalf of the members of the class, and against the defendant and award damages as follows:

- (a) Statutory damages provided under the FDCPA, 15 U.S.C. 1692(k);
- (b) Attorney fees, litigation expenses and costs incurred in bringing this action; and
- (c) Any other relief that this Court deems appropriate and just under

the circumstances.

Dated: Cedarhurst, New York  
January 30, 2012



Adam J. Fishbein, P.C. (AF-9508)

Attorney At Law

**Attorney for the Plaintiff**

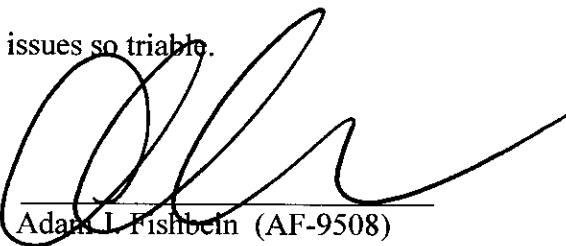
483 Chestnut Street

Cedarhurst, New York 11516

Telephone (516) 791-4400

Facsimile (516) 791-4411

Plaintiff requests trial by jury on all issues so triable.



Adam J. Fishbein (AF-9508)

PO Box 101926, Dept. 2417  
Birmingham, AL 35210

002744



April 25, 2011

29344\*\*\*\*\*AUTO\*\*3-DIGIT 112  
Shimon Minsky  
762 Empire Blvd Apt 2D  
Brooklyn NY 11213-5635

14



CREDIT &amp; COLLECTION CORP

Capital One Bank (USA), N.A.  
PO Box 71083  
Charlotte, NC 28272-1083  
1-866-915-5207



Client:	Capital One Bank (USA), N.A.
Account Number:	[REDACTED]
Global ID:	26070010
Amount Due:	\$2159.80

Dear Shimon Minsky,

Your delinquent account now meets Capital One Bank (USA), N.A.'s guidelines for legal action if it charges off. Your account has been placed with Global Credit & Collection Corp., a collection agency. This is an attempt to collect a debt. Any information obtained will be used for that purpose.

Capital One Bank (USA), N.A. has not yet made a decision to file a lawsuit, there is still time for you to work with us in resolving this matter. If we cannot get this matter resolved soon and your account charges off, Capital One Bank (USA), N.A. may be forced to take legal action. This could result in a judgment against you. If Capital One Bank (USA), N.A. obtains a judgment against you, they can take whatever actions permitted by law to enforce it. In addition, judgments are a matter of public record, and employers, landlords, and other creditors can check your credit and see that the judgment has been taken against you. It is not too late to fix this situation. We urge you to act now.

Call our office today at 1-866-915-5207 to make arrangements to resolve this matter, if you cannot make your minimum payment, we can go over the options available to you. Prior to any judgment, you will be notified and able to raise defenses. Capital One Bank (USA), N.A.'s remedies will be subject to applicable property exemptions. If you would like to make your payment directly to Capital One please visit [www.capitalone.com/solutions](http://www.capitalone.com/solutions).

Mr. O'Donoghue  
1-866-915-5207

SEE REVERSE SIDE FOR IMPORTANT INFORMATION.

Detach and Return Bottom Portion with Payment

Please print address changes below using blue or black ink.

0000000 0 5178057530954838 00 00000000000000000000000000000000

Street \_\_\_\_\_ Apt. # \_\_\_\_\_

Total Balance: \$2159.80

City \_\_\_\_\_ State \_\_\_\_\_ ZIP \_\_\_\_\_

Total Enclosed: \$ \_\_\_\_\_

Home Phone \_\_\_\_\_ Alternate Phone \_\_\_\_\_

5178057530954838  
SHIMON MINSKY  
762 Empire Blvd  
Apt 2D  
Brooklyn NY 11213-5635

Capital One Bank (USA), N.A.  
PO Box 71083  
Charlotte, NC 28272-1083

**NOTICE OF YOUR RIGHTS UNDER FEDERAL LAW**

Unless you notify this office within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will assume this debt is valid. If you notify this office in writing within 30 days after receiving this notice that you dispute the validity of this debt or any portion thereof, this office will obtain verification of the debt or obtain a copy of a judgment, if any, and mail you a copy of such judgment or verification. If you request this office in writing within 30 days after receiving this notice this office will provide you with the name and address of the original creditor, if different from the current creditor.

**WE ARE ACTING AS A DEBT COLLECTOR. THIS LETTER IS AN ATTEMPT TO COLLECT THIS DEBT AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

We are required under state law to give you the following notices, some of which refer to rights you also have under federal law. This list does not contain a complete list of the rights which consumers or commercial businesses have under state and federal law. Note the following which apply in the specified states:

STATE	APPLICABLE NOTICE
California	<p>The state Rosenthal Fair Debt Collection Practices Act and the Federal Fair Debt Collection Practices Act require that, except under unusual circumstances, collectors may not contact you before 8 a.m. or after 9 p.m. They may not harass you by using threats of violence or arrest or by using obscene language. Collectors may not use false or misleading statements or call you at work if they know or have reason to know that you may not receive personal calls at work. For the most part, collectors may not tell another person, other than your attorney or spouse, about your debt. Collectors may contact another person to confirm your location or enforce a judgment. For more information about debt collection activities, you may contact the Federal Trade Commission at 1-877-FTC-HELP or <a href="http://www.ftc.gov">www.ftc.gov</a>.</p>
Colorado	<p>A consumer has the right to request in writing that a debt collector or collection agency cease further communication with the consumer. A written request to cease communication will not prohibit the debt collector or collection agency from taking any other action authorized by law to collect the debt.</p> <p><b>FOR INFORMATION ABOUT THE COLORADO FAIR DEBT COLLECTION PRACTICES ACT, SEE <a href="http://WWW.COLORADOATTORNEYGENERAL.GOV/CA">WWW.COLORADOATTORNEYGENERAL.GOV/CA</a>.</b></p> <p>Global Credit and Collection Corp. Office in Colorado: 1776 S. Jackson Street, #900, Denver, CO 80210. Telephone number: 303-753-0945. Hours of operation: Monday to Friday 9:00am - 5:00pm.</p>
Maine	<p>The hours of operation for Global are as follows:</p> <p>Monday to Friday 8am to 9pm      Saturday 8:30am to 5pm      Sunday 8:30am to 5pm</p> <p>Our time zone is Eastern Standard time</p>
Massachusetts	<p><b>NOTICE OF IMPORTANT RIGHTS:</b></p> <p><b>YOU HAVE THE RIGHT TO MAKE A WRITTEN OR ORAL REQUEST THAT TELEPHONE CALLS REGARDING YOUR DEBT MAY NOT BE MADE TO YOU AT YOUR PLACE OF EMPLOYMENT. ANY SUCH ORAL REQUEST WILL BE VALID FOR ONLY TEN DAYS UNLESS YOU PROVIDE WRITTEN CONFIRMATION OF THE REQUEST POSTMARKED OR DELIVERED WITHIN SEVEN DAYS OF SUCH REQUEST. YOU MAY TERMINATE THIS REQUEST BY WRITING TO THE DEBT COLLECTOR.</b></p> <p>Global Credit and Collection Corp. Office in Massachusetts: 5230 Washington Street, West Roxbury, MA 02132. Hours of operation: Monday to Thursday 10:00am - 3:00pm.</p>
Michigan	<p>Michigan requires us to give the following notice, however, all consumers have these rights under federal law: The failure of a consumer to dispute the validity of a debt shall not be construed as an admission of liability by the consumer.</p>
Minnesota	<p>This collection agency is licensed by the Minnesota Department of Commerce.</p>
New York	<p>New York City Department of Consumer Affairs license numbers are - Williamsville-1210498 and Markham-1210496. In accordance with the requirements of NY Code Section 20-493.1 we are disclosing that Global Credit and Collection Corporation's contact person is Mr. Daniele DePaolis, telephone number 1-877-241-7840.</p>
North Carolina	<p>North Carolina Department of Insurance permit numbers are - Williamsville-4370 and Markham-4369.</p>
Tennessee	<p>This collection agency is licensed by the Collection Service Board of the Department of Commerce and Insurance. Tenn. Code. Ann ss 62-20-111(b).</p>
Washington	<p>Global Credit &amp; Collection Corp. licensed address in Washington is: 512 Bell Street, Edmonds, Washington 98020-3147.</p>
Wisconsin	<p>This collection agency is licensed by the Administrator of the Division of Banking, PO Box 7876, Madison, Wisconsin 53707.</p>